

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MICHAEL KEITH NICHOLS,)	
)	
Plaintiff,)	
)	
v.)	1:09CV748
)	
UNITED STATES OF AMERICA,)	
)	
Defendant(s).)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff, a federal prisoner, has submitted a motion for return of property pursuant to Fed. R. Crim. P. 41(g). Such a motion filed after the completion of criminal proceedings is a civil action subject to the fee provisions of 28 U.S.C. § 1915. *See United States v. Jones*, 215 F.3d 467 (4th Cir. 2000). Plaintiff has failed to submit the applicable fee or a usable application to proceed *in forma pauperis*. He did submit an *in forma pauperis* application, but has given neither the total amount of deposits into his prison trust account in the past six months, nor provided a statement from his prison showing the amounts deposited in his account. He must do one or the other in order for the court to be able to process his application and calculate a partial payment, if any. This motion should, therefore, be dismissed without prejudice to Plaintiff submitting his action on the proper forms along with

either the \$350.00 filing fee or a properly completed application to proceed *in forma pauperis*. To assist Plaintiff, the Clerk will send Plaintiff the Motion for Return of Property forms, instructions and an application to proceed *in forma pauperis*.

In forma pauperis status is granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order. The Clerk is instructed to send Plaintiff Motion for Return of Property forms, instructions, an application to proceed *in forma pauperis*, and a copy of pertinent parts of Fed. R. Civ. P. 8 (*i.e.* Sections (a) & (e)).

IT IS RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Plaintiff filing a civil complaint, on the proper Motion for Return of Property forms, which corrects the defects cited above.

A handwritten signature in black ink, appearing to read 'Wallace W. Dixon', is written over a horizontal line.

Wallace W. Dixon, U. S. Magistrate Judge

October 8, 2009